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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA, WESTERN DIVISION

In re

Application of
SHAHROKH MIRESKANDARI,
Applicant.

RE APPEAL IN THE:
HIGH COURT OF JUSTICE,
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT,
LONDON ENGLAND

SHAHROKH MIRESKANDARI,
Appellant,
SOLICITORS REGULATION
AUTHORITY,
Respondent.

CASE NO. CV 12-10310 DSF (Ex)

**REPLY IN SUPPORT OF
APPLICANT'S MOTION FOR
RECONSIDERATION OF ORDER
DATED JANUARY 8, 2013 (DKT. 24)**

Hon. Dale S. Fischer

Date: February 25, 2013
Time: 1:30 p.m.
Courtroom: 840

REPLY ARGUMENT¹

I. The SD Decision Was Not Final Until January 7, 2013

Respondent incorrectly conflates a magistrate judge's ruling subject to objections and *de novo* review by a district court judge under Fed. R. Civ. P. 72 with *res judicata* consequences of a final judgment. As the SD Decision was not a final judgment until the 14 days provided by Fed. R. Civ. P. 72 lapsed on January 7, 2013, it would have been premature for Applicant to argue collateral estoppel prior to that date. Thus, there has been a significant change subsequent to this Court's decision.

II. Collateral Estoppel Applies

First, the SD Decision does not involve different issues or different discovery. In the SD Decision, it was determined that Dr. Scoma's "'*ex parte* communications with [Respondent] (including his own emails); his relationship with Bird Marella (and whether [Respondent] secretly promised that it would provide legal counsel to him while he was the [Tribunal's] independent expert); and his understanding of his duties as an independent expert' ... are relevant to Applicant's claim that Respondent improperly fostered bias of Dr. Scoma against Applicant.'" (SD Decision, Dkt. 19, p. 6.) These are the same communications at issue here, albeit from the Bird Marella side of the conversation.²

Second, per the SD Decision, Respondent is estopped from arguing that the requested documents would neither be discoverable nor admissible in the U.K. proceeding, as it was clearly determined that "the Court is not required to determine whether the evidence obtained from Dr. Scoma would be discoverable

¹ Applicant's descriptions of the requirements of § 1782 and discretionary factors are taken almost verbatim from the application filed by the SRA in California in 2009.

² The critical issue is that Bird Marella may have preserved communications with Dr. Scoma that Dr. Scoma did not. If Bird Marella have no new documents, then there is no burden because they need not produce anything.

1 or admissible in the English appellate proceedings.” (SD Decision, Dkt. 19, p.
2 5), *citing Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 253-54
3 (2004) (rejecting argument that § 1782 contains a “foreign-discoverability
4 requirement”).

5 Third, it is respectfully submitted that this Court misconstrued the record
6 to the extent it is concerned that Applicant may be trying to evade discovery
7 supervision in state and federal courts. However, the Declarations of English
8 barrister James Stuart makes clear that this evidence is for use in England, not to
9 circumvent discovery stays in the pending Daily Mail and RICO cases, which is
10 consistent with the SD Decision that the requested discovery is relevant to the
11 English proceedings. It is of record that Respondent has not moved nor
12 complained in the pending Daily Mail and RICO cases regarding Applicant
13 transgressing any discovery restrictions.

14 **III. If the Court Denies the Motion for Reconsideration, the Court Should**
15 **Distinguish Its Decision from the SD Decision Based on the Source of**
16 **Documents Sought**

17 As Applicant may seek further § 1782 discovery for use in the English
18 appeal, in the alternative to granting the discovery requested, in order to avoid
19 conflict with the SD Decision, Applicant requests that this Court amend its Order
20 as being fact-specific to the proposed subpoena on Bird Marella because the
21 documents sought implicate attorney-client privilege and work product doctrine.

22 **CONCLUSION**

23 For the foregoing reasons, the Court should reconsider its order, grant the
24 Application, and order that a subpoena may be served on Bird Marella for its
25 communications with Dr. Scoma which were not produced or subject to an
26 assertion of privilege in the Southern District. Alternatively, the Court should
27 either vacate its order or amend its order to deny discovery due to issues
28 implicating the attorney-client privilege and work product doctrine.

1 Dated: February 13, 2013 Respectfully Submitted,
2

3 /s/ Maxwell M. Blecher
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5 /s/ Bruce S. Marks
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